



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Little, et al. **Art Unit:** 3731
Serial No.: 09/975,427 **Examiner:** Nguyen
Filed: October 10, 2001
Docket No.: S145-USA
For: Medical Tack with Variable Effective Length

**Assistant Commissioner
For Patents
Washington, D.C. 20231**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Box Non-Fee Amendment, Commissioner of Patents and Trademarks, Washington, D.C. 20231, on:

April 11, 2003

Lisa Cody

RESPONSE

Dear Sir:

In response to the Office Action of February 3, 2003, applicant provides the following comments:

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INTRODUCTORY COMMENTS

Claims 1 – 23 are pending in the present application. Claims 1 – 6 and 10 stand rejected under 35 USC 102 as anticipated by US Patent 5,471,268 (Schutz). Claims 11, 12, and 14 stand rejected under 35 USC 102 as anticipated by US Patent 6,165,192 (Greenberg). Claim 7 stands rejected under 35 USC 103(a) as unpatentable over Schutz. Claims 6 and 9 stand rejected under 35 USC 103(a) as unpatentable over Schutz in view of US Patent 5,364,365 (Wortrich).

Schutz discloses tacking nails and a tacking device (a tool to insert the tacking nails). This tacking device (figure 1) does indeed include a spring. However, the

tacking nail itself (figure 2) does not. The spring in the tacking device serves to force a tacking nail into tissue at the time of implant. It does not affect the effective length of the tacking nail, nor does it remain with the tacking nail once implanted. The tacking nail disclosed in figure 2 of Schutz is typical of the prior art and in no way discloses the present invention. The present invention is a tack where the tack itself (not the inserter) includes a spring or other means for varying the effective length thereof. Schutz discloses a rigid tack with no means of varying its length.

Greenberg, the present applicant's prior art, also discloses a spring loaded tacking device (the inserter). The spring is used to rapidly drive the tack into tissue. The spring does not affect the length of the tack. The spring does not remain with the tack once implanted. Figures 1 and 2 cited by the examiner disclose the tack inserter and a rigid tack (reference numeral 6). The Examiner further asserts that reference numeral 5 is a nut to vary the length of the tack. Reference numeral 5 is the tack holder, and is part of the tacking device, not the tack. Further, the shaft (reference numeral 8) is the shaft of the tacking device, not the tack.

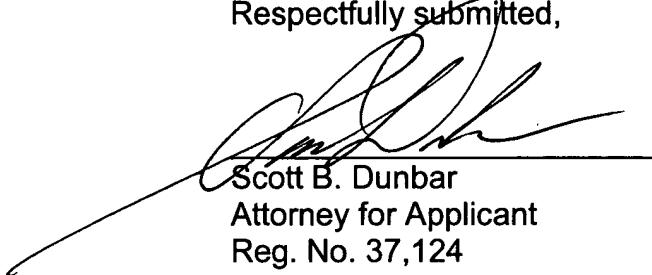
Wortrich discloses a laparoscopic surgical instrument. The cutting blade of the instrument retracts under a cover by force of a spring like other spring-loaded tools. This helps prevent inadvertent cutting during use of the surgical instrument. No medical tack is disclosed in Wortrich, fixed or variable.

Applicant has not amended the claims in response to the present office action. Indeed, no amendment is required by the prior art. Applicant respectfully requests that the Examiner review the prior art in light of the above comments and reconsider the rejections. Applicant is confident that upon review, the Examiner will see that the present invention is not disclosed individually or in combination by the prior art.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If for any reason the Examiner finds the application other than in condition for allowance, the Examiner is requested to call the undersigned attorney at the Los Angeles, California telephone number (818) 833-5055 to discuss the steps necessary for placing the application in condition for allowance.

Respectfully submitted,

4/11/03
Date


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